

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

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|--|--|---|----------------------|
| Applicant's or agent's file reference | FOR FURTHER ACTION | | See Form PCT/PEA/416 |
| International application No. PCT/EP2004/003234 | International filing date (day/month/year) 24.03.2004 | Priority date (day/month/year) 02.04.2003 | |
| International Patent Classification (IPC) or national classification and IPC A61K7/16 | | | |
| Applicant UNILEVER N.V. et al | | | |
| <p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 4 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p> | | | |
| <p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p> | | | |
| Date of submission of the demand 23.09.2004 | | Date of completion of this report 09.03.2005 | |
| Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016 | | Authorized Officer Minas, S Telephone No. +31 70 340-3936 | |



**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/003234

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:

- ☐ international search (under Rules 12.3 and 23.1(b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-7 as originally filed

Claims, Numbers

1-7 as originally filed

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/003234

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|-------------|-------|
| Novelty (N) | Yes: Claims | 5,7 |
| | No: Claims | 1-4,6 |
| Inventive step (IS) | Yes: Claims | |
| | No: Claims | 1-7 |
| Industrial applicability (IA) | Yes: Claims | 1-7 |
| | No: Claims | |

2. Citations and explanations (Rule 70.7):

see separate sheet

Re Item V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

The following documents (D1-D4) are referred to in this WO-ISA; the numbering will be adhered to in the rest of the procedure:

- D1: US-A-3 573 886 (GOETZINGER NICHOLAS J ET AL) 6 April 1971 (1971-04-06)
- D2: DE 28 02 489 A (BAYER AG) 26 July 1979 (1979-07-26)
- D3: GB-A-2 001 849 (ICI LTD) 14 February 1979 (1979-02-14)
- D4: US 2001/007161 A1 (BEALS DONNA J ET AL) 12 July 2001 (2001-07-12)

V.1 Novelty (Article 33(2) PCT)

Document D1 discloses (see claim 1) a polishing composition having an average particle size from 0.5-20 microns comprising a rare earth oxide (La₂O₃, CeO₂, Pr₆O₁₁, Nd₂O₃, Sm₂O₃, see Example 1) and from 0.1-75 wt% of calcium metasilicate. A claim to a composition for a particular use should be construed as meaning a composition which is suitable for the stated use. Therefore a known product which prima facie is the same as the composition defined in the claim and is in a form in which it is in fact suitable for the stated use, though it has never been described for that use, would deprive the claim of novelty. The subject-matter of claims 1-4 and 6 is therefore not new (Article 33(2) PCT).

V.2 Inventive step (Article 33(3) PCT)

Oral compositions comprising a mixture of a lanthanide metal oxide and a further abrasive are known (see example 5 of D2). The use of oral compositions comprising a lanthanide metal in general for cleaning teeth and especially for removing plaque and stains has also been put into practice (D3, example 8). The feature of using a particle size of 0.5-50 microns is common knowledge and has already been employed for the same abrasive purpose in this field, see document D4, paragraph [0026]. It would therefore be obvious to the person skilled in the art, to apply this feature with corresponding effect to an oral composition for abrasive purposes. Therefore the subject matter of claims 1-7 would not fulfill the requirements of Article 33(3) PCT.